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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 DESHAWN DARBY, } Case No.: CV 17-04835-CAS (JDE)
12 Plaintiff, }
13 v. } MEMORANDUM AND ORDER
14 LOS ANGELES COUNTY, et al., } DISMISSING COMPLAINT WITH
15 Defendants. } LEAVE TO AMEND
16

17 I.
18

19 **BACKGROUND**

20 Plaintiff Deshawn D. Darby (“Plaintiff”), who is in custody at the Twin
21 Towers Correctional Facility in Los Angeles (“the Jail”), proceeding pro se,
22 filed a civil rights complaint (Dkt. 1, “Complaint”) under 42 U.S.C. § 1983
23 (“Section 1983” or “§ 1983”) on June 30, 2017 against the County of Los
24 Angeles (“the County”) and eighteen individual defendants named in the body
25 of the Complaint: (1) Jason Thompson, a police officer employed by the Los
26 Angeles Police Department (“LAPD”) (“Officer Thompson”); (2) David Suh,
27 a police officer employed by the LAPD (“Officer Suh”); (3) Charlie Beck, the
28 Chief of the LAPD (“Chief Beck”); (4) Jackie Lacey, District Attorney for Los

1 Angele County (“District Attorney Lacey”); (5) Deputy District Attorney
2 (“DDA”) Steven Ipson; (6) DDA Rebekah Weldon; (7) DDA Jeff Kelly; (8)
3 Bob Chen/Chan; (9) Kevin Liu; (10) David Richman;¹ (11) Janice Fukai,
4 Alternate Public Defender for Los Angeles County (“Alternate Public
5 Defender Fukai”); (12) Deputy Public Defender (“DPD”) Jane DOE; (13)
6 DPD Rent Wakuta; (14) the Honorable Scott Gordon (“Judge Gordon”),
7 Judge of the Los Angeles County Superior Court (“Superior Court”); (15) the
8 Honorable Douglas Sortino, Judge of the Superior Court (“Judge Sortino”);
9 (16) Jerry Lennon, a private attorney of the California State Bar Panel acting
10 as stand-by attorney; (17) Michael DiMateo, a private investigator appointed
11 by the Superior Court; and (18) Lon McCracken, an individual employed by
12 Camacho Auto Sales of Palmdale, California. Complaint ¶¶ 5, 6, 7, 28, 47.

13 In accordance with 28 U.S.C. §§ 1915(e)(2) and 1915A, the Court must
14 screen the Complaint for purposes of determining whether the action is
15 frivolous or malicious, fails to state a claim on which relief might be granted,
16 or seeks monetary relief against a defendant who is immune from such relief.

17 II.

18 **SUMMARY OF ALLEGATIONS IN THE COMPLAINT**

19 The Complaint is predominantly a description of a series of alleged
20 events, loosely organized around categories of defendants.

21 A. Allegations against LAPD Officers

22 On September 16, 2015, LAPD officer arrested Plaintiff for hit-and-run
23 and taken to the Wilshire Division. *Id.* ¶ 10. At approximately 11:14 p.m. on
24 the same day, Officer Thompson completed a probable cause determination
25

26 ¹ Defendants Chen/Chan, Liu, and Richman are named in the same paragraph as
27 District Attorney Lacey and defendants Ipson, Weldon, and Kelly, which leads the
28 Court to infer that they are employed by the District Attorney’s office; however,
Plaintiff does not specify their employer. *See* Complaint ¶ 28

1 form and submitted it to the Superior Court (id. ¶ 11; Dkt 1-1 at 1 (CM/ECF
2 pagination)) in which he wrote that Plaintiff was involved in several accidents.
3 Id. ¶ 12. Officer Thompson wrote that in one of the accidents, Plaintiff's
4 license plate was imprinted on a car in one location; later, Officer Thompson
5 reported Plaintiff's license place was at a separate scene three blocks from the
6 previous location. Id. Officers Thompson and Suh wrote a total of four police
7 reports of which Plaintiff is aware. Id. Plaintiff alleges Officers Suh and
8 Thompson did not mention dispatch phone calls from two witnesses reporting
9 a crime involving "road rage" between two or three cars, one of which
10 allegedly ran Plaintiff's vehicle off the road. Id. ¶ 13. Officers Suh and
11 Thompson also allegedly failed to mention in their reports a 911 call to report
12 an accident from the co-owner of Plaintiff's vehicle, which Plaintiff alleges
13 would exculpate him. Id. ¶ 14. Plaintiff alleges Officers Suh and Thompson
14 moved Plaintiff's bumper and license plate "and caused a false report to be
15 written and after rec[ei]ving no signature stating that there is or isn[']t probable
16 cause[,] still allowed Plaintiff to be sent before another magistrate where they
17 caused the case to be turned over to the district attorney[']s office for the filing
18 of a felony complaint." Id. ¶ 15. Plaintiff alleges Officers Suh and Thompson
19 acted in conjunction with other police officers involved in the investigation. Id.
20 ¶ 16. Plaintiff alleges that on September 16, 2015, Officers Suh and Thompson
21 caused Plaintiff to be charged with one felony and three misdemeanor hit-and-
22 run with injury to person and damage to property. Id. ¶ 17. Plaintiff alleges on
23 information and belief that Chief Beck was aware of Officers Thompson and
24 Suh's "vicious propensities" but failed to act to address them. Id. ¶ 21.

25 B. Allegations against Personnel from the District Attorney's Office

26 On September 18, 2015, DDA Ipson filed a criminal complaint against
27 Plaintiff and he was arraigned on the four counts associated with the hit-and-
28 run, including one felony. Id. ¶ 30. Plaintiff has been incarcerated since that

1 time. Id. Plaintiff alleges the criminal charges were terminated in his favor by
2 order of dismissal on November 17, 2016, but Plaintiff alleges that further
3 detention and prosecution was ordered and directed by DDA Ipson. Id. ¶¶ 18,
4 32. Plaintiff claims that District Attorney Lacey approved his prosecution and,
5 in the alternative, that it was ratified by District Attorney Lacey and DDAs
6 Ipson, Weldon, and Kelly as part of the investigation and prosecution of the
7 alleged crime. Id. ¶ 34. Plaintiff alleges that District Attorney Lacey and DDAs
8 Ipson, Weldon, Kelly, Chen, Liu, and Richman took an active role in the
9 investigation and prosecution of his alleged crime and caused Plaintiff to be
10 “further detained, incarcerated and prosecuted without probable cause of his
11 guilt in an attempt to secure a conviction against Plaintiff.” Id. ¶¶ 35, 36.
12 Plaintiff alleges these defendants individually and collectively knew at the time
13 of Plaintiff’s arraignment, and at all times since then, of the existence of
14 evidence proving Plaintiff’s innocence and also knew that the evidence
15 collected in connection with the charges was inconsistent with Plaintiff’s guilt.
16 Id. ¶¶ 37, 38. Plaintiff alleges each defendant acted outside of his or her
17 jurisdiction and without authorization and that each defendant individually,
18 and in concert, “acted willfully, knowingly and purposefully with specific
19 intent to deprive Plaintiff [] of his right [to] freedom from illegal seizure of his
20 person, freedom from unlawful arrest without evidence in support thereof, and
21 freedom from illegal detention and imprisonment.” Id. ¶¶ 39, 40.

22 C. Allegations against Alternate Public Defender’s Office Personnel

23 On September 18, 2015, DPD Jane DOE was appointed as Plaintiff’s
24 public defender. Id. ¶ 49. Plaintiff alleges DPD DOE allowed DDA Ipson to
25 file a felony complaint against him without reasonable or probable cause, and
26 that DPD DOE should have prevented the filing of the unsupported charges.
27 Id. Plaintiff alleges DPD DOE failed to look at all discovery or investigate the
28 case and that she did not object to the filing of the charges against Plaintiff. Id.

¶ 50. The Complaint alleges that on September 30, 2015, DPD Wakuta requested a continuance without Plaintiff's knowledge and admitted he had not spoken to Plaintiff. Id. ¶ 51, 53. Plaintiff further alleges that DPD Wakuta requested another continuance on October 22, 2015 so that DDA Weldon could secure discovery that was hand-delivered by an LAPD detective that day. Id. ¶ 51. Plaintiff alleges that on November 3, 2015, DPD Wakuta waived a preliminary hearing on Plaintiff's behalf without Plaintiff's knowledge. Id. ¶ 53. Plaintiff alleges DPD Wakuta allowed DDA Weldon to amend charges without notice, and later when acting in propria persona ("Pro Per"), Plaintiff learned that his charges only carried a maximum of one year per felony and six months per misdemeanor, whereas DPD Wakuta counseled Plaintiff that the maximum was between 12-14 years and that Plaintiff should accept a deal for five years. Id. ¶ 54.

Plaintiff alleges that "DPD Wakuta failed to investigate and [move] for charges to be consolidated due to there being no actus reus[] of the charged offense where (5) five charges[:] (2) two felony and (3) misdemeanor charges were all from (1) one accident." Id. ¶ 55. With respect to Plaintiff's sixth charge, Plaintiff alleges DPD Wakuta "failed to investigate and prove Plaintiff was never at that location and LAPD and witness[es] were falsifying evidence." Id. Plaintiff alleges defendants Wakuta and Weldon held a preliminary hearing without legal authority to do so, in violation of Plaintiff's rights. Id. ¶ 54. Defendants Wakuta and Kelly "conspired to manipulate Plaintiff [] with false altered medical records to force Plaintiff [] to take a deal." Id. ¶ 56. DPD Wakuta also ordered for medical records to be sealed so that Plaintiff could not see them. Id. The records were allegedly taken out of court by DPD Wakuta, then scanned and altered by DDA Weldon. Id. Plaintiff alleges that in an email exchange between defendants Wakuta and Kelly, DPD Wakuta advised he would return the records to the court. See id. Plaintiff

1 alleges that DPD Wakuta knew an unidentified individual assaulted Plaintiff
2 and never attempted to introduce that evidence or evidence from 911 calls. Id.
3 ¶ 57. Plaintiff alleges that DPD Wakuta engaged in irregularities regarding
4 GPS records, which Plaintiff alleges were slow to be provided to him, and
5 which contained different information when finally provided. Id.

6 D. Allegations against Private Citizens

7 Plaintiff alleges defendant DiMateo would not perform the “duties
8 expected of him,” when Plaintiff provided defendant DiMateo with a list of
9 things required to assist Plaintiff while he was Pro Per. Id. ¶ 58. Plaintiff
10 alleges defendant DiMateo failed to: “(1) use court order[ed] visit due to
11 hearing impairment and forced Plaintiff to strain to hear over visiting phone;
12 (2) pick up any discovery from district attorney[’s] office, or be at court when
13 agreed; (3) go take photos of vehicle and inv[e]stigate if [there] was damage to
14 rear; (4) go get statements from witnesses at any scene of accidents; (5) pick up
15 transcripts ordered by court and or properly serve subpoenas on
16 witnesses;[and] (6) failed to pick up records of subpoena information on any
17 documents from court after rec[ei]ving 40 hour that he was paid to do
18 nothing.” Id. Plaintiff also alleged defendant DiMateo conspired with other
19 defendants from “put[t]ing up a defense.” Id. ¶ 59.

20 Plaintiff alleges defendant Lennon “conspired and assisted in ensuring”
21 Plaintiff did not receive a fair or speedy trial. Id. ¶ 60. As an example, Plaintiff
22 points to defendant Lennon’s request of Plaintiff to waive time to allow an
23 additional sixty days to prepare for a hearing even though “Plaintiff was 58 of
24 60 on calendar for trial.” Id. Plaintiff alleges defendant Lennon failed to advise
25 him of the consequences of waiving time and alleges that after a time waiver,
26 defendant Lennon was still not unprepared. Id. Plaintiff alleges that defendant
27 Lennon advised the Court and his family that Plaintiff was incompetent to
28 represent himself, without input from Plaintiff or evidence to support the

1 assertion. Id. ¶ 62. Defendant Lennon then advised the court and his family to
2 send Plaintiff to a mental hospital. Id. Plaintiff alleges that on or about
3 December 2016 during a court hearing over a discovery dispute regarding 911
4 calls, defendant Lennon denied ever being given two compact discs -- one of
5 911 calls and the other of photos from the LAPD. Id. ¶ 63. Defendant Lennon
6 was given these discs by DDA Kelly on or about May or June in 2016. Id.

7 Plaintiff alleges defendant McCracken conspired to prevent Plaintiff
8 from proving his innocence. Id. ¶ 64. Plaintiff alleges that despite repeated
9 requests and a subpoena, defendant McCracken refused to provide GPS
10 records, although Plaintiff is a customer of Camacho Auto Sales, has a loan
11 from King of Credit, and claims to own or possess these records. Id. ¶¶ 64, 67,
12 68. Plaintiff further alleges that defendant McCracken provided at least 10
13 pages of documents to DPD Wakuta in a subpoena served on him in March
14 2016, and that DPD Wakuta opened the subpoena information although it was
15 “no longer his case or obligation.” Id. ¶ 65. Plaintiff alleges defendant
16 McCracken failed to initial written requests to provide Plaintiff with the same
17 documents it had provided DPD Wakuta, although Plaintiff had explained
18 that he was acting as his own attorney. Id. ¶ 66. Defendant McCracken
19 allegedly provided Plaintiff with a three-page document of his GPS location,
20 and the document only showed Plaintiff’s location after the collision, further
21 diminishing Plaintiff’s ability to prove his innocence. Id.

22 E. Allegations against Judicial Officers

23 Plaintiff alleges Judge Gordon expressed prejudicial bias toward
24 Plaintiff. Id. ¶69. Plaintiff further alleges Judge Gordon said “we won’t need a
25 trial. I’ll just violate his probation and send him to prison that way.” Id.
26 Plaintiff also claims that Judge Gordon denied Plaintiff a fair and speedy trial
27 by causing unreasonable delays and denied Plaintiff the ability to represent
28 himself by continuously taking away Plaintiff’s Pro Per status without

1 reasonable or probable cause or affording Plaintiff a hearing or notice. Id. ¶ 70.
2 In addition, Plaintiff alleges Judge Gordon ordered Plaintiff to undergo a
3 mental health evaluation without any evidence of being incompetent in order
4 to avoid a trial and prevent Plaintiff from representing himself. Id. ¶ 71.
5 Plaintiff alleges Judge Gordon refused to turn over subpoenaed information
6 that would have cleared Plaintiff of criminal charges and would have exposed
7 the misconduct of Officers Thompson and Suh in their investigation of the
8 traffic collision that occurred on September 16, 2015. Id. ¶ 72. Plaintiff alleges
9 Judge Gordon allowed the continuation of the criminal prosecution after
10 having knowledge of a lack of probable cause against Plaintiff. Id. ¶ 73. Judge
11 Gordon also allegedly denied a motion to set-aside the criminal information,
12 then failed to give grounds for the denial. Id. Plaintiff alleges Judge Gordon
13 allowed original court records to be removed from the court and then ordered
14 them sealed after they were returned by DPD Wakuta. Id. ¶ 74.

15 Plaintiff alleges Judge Sortino demonstrated bias toward Plaintiff in
16 mentioning that his wife was a deputy district attorney for Los Angeles County
17 and in describing how he felt about people on probation. Id. ¶ 76. Plaintiff
18 alleges that Judge Sortino held proceedings with no legal authority failed to
19 advise Plaintiff in writing what condition of probation Plaintiff had violated;
20 Plaintiff also contests the basis for the underlying offense. Id. ¶ 77. Plaintiff
21 alleges Judge Sortino found Plaintiff had violated the terms of his probation
22 “based on [a] dismissed case that was not supported by probable cause prior to
23 the filing of the criminal complaint[,] which violated federal law. Id. ¶ 78.
24 Plaintiff asserts that when he raised the issue, Judge Sorino said: “that’s
25 irrelevant to what is going on here today.” Id. ¶ 79. Plaintiff alleges that Judge
26 Sortino stated throughout proceedings that Plaintiff had disqualified Judge
27 Gordon; Plaintiff felt this was done as a form of retaliation. Id. ¶ 80. Judge
28

Sortino also referred to Plaintiff as “Jailey” when talking to him and continued to show signs of prejudice by intentionally misstating law. Id. ¶ 81.

Plaintiff alleges that Judge Sortino’s and defendant Richman’s misstatements of law caused Plaintiff to reject a valid plea, which would have allowed Plaintiff to go home and spend the holidays with his family. Id. Plaintiff claims that both Judge Sortino and defendant Richman said that Plaintiff had a strike for robbery and that he would have to go to prison if he accepted the plea. Id. Plaintiff advised defendants he had no strikes, only “a prior 245/A.D.W.,” which Judge Sortino claimed to be within the category of a strike. Id. When calculating time credits, Judge Sortino advised Plaintiff he would only receive time from the day of his probation hold being placed on him, which would have credited Plaintiff approximately 60 days. See id. Later, at the final sentencing hearing, Plaintiff alleges Judge Sortino sentenced him to the maximum sentence and imposed the sixty days that were originally not going to be imposed; Judge Sortino also stated that the “245/A.D.W.” charge was not a strike and Plaintiff would serve his sentence in county Jail as opposed to prison. Id. ¶ 82. Plaintiff claims these actions were evil and malicious and that Judge Sortino failed to impose good conduct credit for time when Plaintiff was out on bail on his own recognizance. Id. ¶¶ 82, 83.

Plaintiff also alleges that Judge Sortino allowed a continuance for a witness who was never properly served and perhaps not served at all. Id. ¶ 84. Plaintiff further alleges that the deputy district attorney failed to give a two-day notice to Plaintiff with respect to the witness. See id. Plaintiff alleges that this witness lied under oath and could not recollect or remember the events in question, which should have disqualified him. Id. However, Plaintiff alleges this witness’s testimony provided the basis for the prosecution of the criminal case against Plaintiff; additionally, Plaintiff alleges this witness had “committed an assault on Plaintiff and vehicle.” Id. Plaintiff alleges that Judge

Sortino failed to address discovery issues and allowed defendant Richman to conceal 911 calls that would prove Plaintiff's innocence. Id. ¶ 85. Plaintiff further alleges that all defendants knew of the evidence that would negate the charged offense. Id. Plaintiff alleges that Judges Gordon and Sortino relied on an erroneous report, petitioned by DDA Weldon, and used this report to violate Plaintiff's probation. Id. ¶ 75.

Plaintiff alleges he suffered and continues to suffer great mental anguish and claims economic losses of \$15,000 associated with his legal defense against the "unfounded and unwarranted prosecution by defendants," id. ¶ 42, and future economic losses by reason of his incarceration and "having been greatly humiliated and held up to public score and derision." Id. ¶ 41.

Plaintiff alleges the following discrete claims: false arrest and imprisonment; illegal detention; malicious prosecution; abuse of process; prima facie tort; conspiracy; negligence and gross negligence; abuse of authority; and breach of duty and ineffective assistance of counsel. Id. ¶ 91. Plaintiff asserts that his claims emanate from rights secured by the First, Fourth, Fifth, Eighth and Fourteenth Amendments, and as a result, he seeks a declaratory judgment, injunctive relief (against "the Los Angeles District Attorney Office," "the Superior Court," and "the Los Angeles Public Defender Office" and their respective, unspecified, "representatives" to, inter alia "stop with the abuse of process"), court costs, and compensatory and punitive damages. Id. ¶¶ 2, 24, 39, 89, 92, 93, 94, 95.

III.

STANDARD OF REVIEW

A complaint may be dismissed for failure to state a claim for two reasons: (1) lack of a cognizable legal theory; or (2) insufficient facts under a cognizable legal theory. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990). When screening a complaint, the Court applies the same

1 standard as it would when evaluating a motion to dismiss under Federal Rule
2 of Civil Procedure 12(b)(6) (“Rule 12(b)(6)”). See Rosati v. Igbinoso, 791 F.3d
3 1037, 1039 (9th Cir. 2015). Rule 12(b)(6), in turn, is read in conjunction with
4 Rule 8(a) of the Federal Rules of Civil Procedure (“Rule 8”). Zixiang Li v.
5 Kerry, 710 F.3d 995, 998-99 (9th Cir. 2013). Under Rule 8(a)(2), a complaint
6 must contain a “short and plain statement of the claim showing that the
7 pleader is entitled to relief.” While Rule 8 does not require detailed factual
8 allegations, a complaint must allege enough facts to provide both “fair notice”
9 of the particular claim being asserted and “the grounds upon which [that
10 claim] rests.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 & n.3 (2007)
11 (citation and quotation marks omitted); see also Ashcroft v. Iqbal, 556 U.S.
12 662, 678 (2009) (Rule 8 pleading standard “demands more than an unadorned,
13 the-defendant-unlawfully-harmed-me accusation”) (citing Twombly at 555).

14 Thus, to survive screening, a complaint must “contain sufficient factual
15 matter, accepted as true, to state a claim to relief that is plausible on its face.”
16 Nordstrom v. Ryan, 762 F.3d 903, 908 (9th Cir. 2014) (citations and quotation
17 marks omitted). A claim is “plausible” when the facts alleged in the complaint
18 would support a reasonable inference that the plaintiff is entitled to relief from
19 a specific defendant for specific misconduct. Iqbal, 556 U.S. at 678 (citation
20 omitted); see also Gauvin v. Trombatore, 682 F. Supp. 1067, 1071 (N.D. Cal.
21 1988) (complaint “must allege the basis of [plaintiff’s] claim against each
22 defendant” to satisfy Rule 8 pleading requirements) (emphasis added).
23 Allegations that are “merely consistent with” a defendant’s liability, or reflect
24 only “the mere possibility of misconduct” do not “show[] that the pleader is
25 entitled to relief” (as required by Fed. R. Civ. P. 8(a)(2)), and thus are
26 insufficient to state a claim that is “plausible on its face.” Iqbal, 556 U.S. at
27 678-79 (citations and quotation marks omitted).

1 In determining whether the complaint states a claim on which relief may
2 be granted, its allegations of material fact must be taken as true and construed
3 in the light most favorable to Plaintiff. Love v. United States, 915 F.2d 1242,
4 1245 (9th Cir. 1989). For a plaintiff appearing pro se, the court must
5 construe the allegations of the complaint liberally and afford the plaintiff the
6 benefit of any doubt. Karim–Panahi v. Los Angeles Police Dep't, 839 F.2d
7 621, 623 (9th Cir. 1988). However, “the liberal pleading standard . . . applies
8 only to a plaintiff’s factual allegations.” Neitzke v. Williams, 490 U.S. 319, 330
9 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not
10 supply essential elements of the claim that were not initially pled.” Bruns v.
11 Nat’l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey
12 v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

13 If the Court finds that a complaint should be dismissed for failure to state
14 a claim, the Court has discretion to dismiss with or without leave to amend.
15 Lopez v. Smith, 203 F.3d 1122, 1126–30 (9th Cir. 2000) (en banc). The Court
16 should grant leave to amend if it appears possible that the defects in the
17 complaint could be corrected, especially if a plaintiff is pro se. Id. at 1130–31;
18 see also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (noting that
19 “[a] pro se litigant must be given leave to amend his or her complaint, and
20 some notice of its deficiencies, unless it is absolutely clear that the deficiencies
21 of the complaint could not be cured by amendment”). However, if, after
22 careful consideration, it is clear that a complaint cannot be cured by
23 amendment, the Court may dismiss without leave to amend. Id. at 1105–06.

24 IV.

25 DISCUSSION

26 A. The Complaint Does not Unambiguously Identify Defendants

27 The caption of the Complaint lists Los Angeles County, et al., as
28 defendants. Complaint ¶ 1. In the body of the Complaint, however, Plaintiff

1 names eighteen individual “defendants.” Rule 10(a) of the Federal Rules of
2 Civil Procedure requires that the Caption of every complaint “must name all of
3 the parties.” See also Local Rule 11-3.8(d) (“The names of the parties shall be
4 placed below the title of the Court and to the left of center, and single spaced.
5 If the parties are too numerous, the names may be continued on the second or
6 successive pages in the same space”); Ferdik v. Bonzelet, 963 F.2d 1258, 1262-
7 63 (9th Cir. 1992) (dismissing action for refusal to comply with court orders to
8 name defendants in the caption). Further, it is unclear in what capacity many
9 of the individually named defendants are sued. See, e.g. Complaint ¶¶ 5, 6, 7.

10 B. The Complaint Fails to Comply with Federal Rule of Civil Procedure 8

11 As noted, Rule 8 requires that a complaint contain “‘a short and plain
12 statement of the claim showing that the pleader is entitled to relief,’ in order to
13 ‘give the defendant fair notice of what the . . . claim is and the grounds upon
14 which it rests.’” Twombly, 550 U.S. at 555 (internal citation omitted). To
15 comply with Rule 8, a plaintiff should set forth “who is being sued, for what
16 relief, and on what theory, with enough detail to guide discovery.” McHenry
17 v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996).

18 The Complaint does not comply with Rule 8. The Complaint alleges
19 various purported constitutional provisions upon which it is based, and
20 specifies names of various purported common law causes of action, but does
21 not pair specific actions or defendants to particular claims, rendering it
22 impossible for defendants or the Court to know what claims are alleged against
23 which defendants. For example, near the end of the Complaint, Plaintiff
24 alleges claims for: “false arrest and imprisonment; illegal detention; malicious
25 prosecution; abuse of process; prima facie tort; conspiracy tort, negligence and
26 gross negligence; breach of duty and ineffective assistance of counsel” but does
27 not explain which of these claims is brought against which defendants nor does
28 he indicate which specific facts support the specific claims he brings.

1 The Complaint does not provide each defendant with fair notice of the
2 bases for claims against them, in violation of Rule 8. See Cafasso v. Gen.
3 Dynamics C4 Sys., Inc., 637 F.3d 1047, 1059 (9th Cir. 2011); see also
4 American Ass’n of Naturopathic Physicians v. Hayhurst, 227 F.3d 1104, 1107-
5 08 (9th Cir. 2000) (“[A] pro se litigant is not excused from knowing the most
6 basic pleading requirements.”). The Complaint must therefore be dismissed
7 under Rule 8 and Rule 12(b)(6) on this ground, independent of the substantive
8 deficiencies discussed further below.

9 C. Plaintiff Fails to State a Claim Under Section 1983

10 Substantively, the Complaint does not state a civil rights claim under
11 Section 1983 against any defendant.

12 To state a claim under Section 1983, a plaintiff must allege that a
13 defendant, while acting under color of state law, caused a deprivation of the
14 plaintiff's federal rights. 42 U.S.C. § 1983; West v. Atkins, 487 U.S. 42, 48
15 (1988) (citations omitted); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989)
16 (citation omitted). There is no vicarious liability in Section 1983 lawsuits.
17 Iqbal, 556 U.S. at 676 (citing, inter alia, Monell v. Department of Social
18 Services of the City of New York, 436 U.S. 658, 691 (1978)). Hence, a
19 government official—whether subordinate or supervisor—may be held liable
20 under Section 1983 only when his or her own actions have caused a
21 constitutional deprivation. OSU Student Alliance v. Ray, 699 F.3d 1053, 1069
22 (9th Cir. 2012) (citing Monell).

23 A government official may be held individually liable under Section
24 1983 for acts taken in a supervisory capacity, but only when the supervisor's
25 own misconduct caused an alleged constitutional deprivation. See Iqbal, 556
26 U.S. at 676, 677 (“Absent vicarious liability, each Government official, his or
27 her title notwithstanding, is only liable for his or her own misconduct.”); OSU
28 Student Alliance, 699 F.3d at 1069 (supervisor liable under Section 1983 only

1 if “he . . . engaged in culpable action or inaction himself”) (citing Iqbal, 556
2 U.S. at 676). A supervisor may “cause” a constitutional deprivation for
3 purposes of Section 1983 liability, if he or she (1) personally participated in or
4 directed a subordinate’s constitutional violation; or (2) was not “physically
5 present when the [plaintiff’s] injury occurred,” but the constitutional
6 deprivation can, nonetheless, be “directly attributed” to the supervisor’s own
7 wrongful conduct. See Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011).

8 Allegations regarding causation “must be individualized and focus on
9 the duties and responsibilities of each individual defendant whose acts or
10 omissions are alleged to have caused a constitutional deprivation.” Leer v.
11 Murphy, 844 F.2d 628, 633 (9th Cir. 1988) (citations omitted). An individual
12 “causes” a constitutional deprivation when he or she (1) “does an affirmative
13 act, participates in another’s affirmative acts, or omits to perform an act which
14 he [or she] is legally required to do that causes the deprivation”; or (2) “set[s]
15 in motion a series of acts by others which the [defendant] knows or reasonably
16 should know would cause others to inflict the constitutional injury.” Lacey v.
17 Maricopa County, 693 F.3d 896, 915 (9th Cir. 2012) (en banc) (quoting
18 Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978)).

19 In addition to the Rule 8 deficiencies set forth above, the Complaint
20 substantively does not allege a claim upon which relief can be granted.

21 1. The Heck Bar

22 As all of Plaintiff’s claims appear to relate to his arrest and the court
23 proceedings thereafter which culminated in his sentencing following a
24 revocation of a probation and by their nature imply the invalidity of those
25 proceedings, all of Plaintiff’s claims appear to be foreclosed by Heck v.
26 Humphrey, 512 U.S. 477, 486-87 (1994). In Heck, the Supreme Court held that
27 if a judgment in favor of a plaintiff on his civil rights claim necessarily will
28

1 imply the invalidity of an underlying conviction or sentence, the claim must be
2 dismissed unless the plaintiff can demonstrate that the conviction or sentence
3 already has been invalidated. Id. at 486-87; see also Guerrero v. Gates, 442
4 U.S. 697, 703 (9th Cir. 2006) (Heck barred civil rights claims brought by
5 plaintiff who had pled guilty alleging wrongful arrest, malicious prosecution,
6 and conspiracy among police officers to bring false charges against him);
7 Cabrera v. City of Huntington Park, 159 F.3d 374, 380 (9th Cir. 1998) (Heck
8 barred plaintiff's civil rights claims for false arrest and false imprisonment until
9 conviction was invalidated); see also Cotton v. California, Case No. EDCV 16-
10 0202-JAK (JEM), 2016 WL 4775464, *8 (C.D. Cal. Aug. 5, 2016), Report and
11 Recommendation Accepted by 2016 WL 4770026 (C.D. Cal. Sep. 13, 2016)
12 (applying Heck bar to claims allegedly arising from probation violation).

13 Here, although Plaintiff alleges that certain criminal charges were
14 dismissed (Complaint ¶ 18), he also asserts that his probation violation
15 stemmed from the same conduct. Id. ¶¶ 77-78. Further, the Complaint does not
16 allege that Plaintiff's sentence has been reversed, expunged or otherwise
17 invalidated, nor could it. On October 25, 2017, the Court of Appeal for the
18 State of California, Second Appellate District, Division Five, in case number
19 B280992, an appeal from the Superior Court of Los Angeles County (Superior
20 Court Case No. BA417891), in an unpublished written opinion or which this
21 Court takes judicial notice under Rule 201 of the Federal Rules of Evidence,
22 affirmed Plaintiff's probation revocation, noting that the court had "examined
23 each of [Plaintiff's] contentions" and found them to be "entirely without
24 merit," reciting that the court's independent review of the record reflected that
25 the revocation followed a formal violation hearing "at which witnesses
26 provided substantial evidence of [Plaintiff's] commission of a hit and run
27 following his traffic collision involving two other occupied vehicles."
28

1 As a result, all of Plaintiff's claims are barred by Heck.

2 2. Claims against the County or the City of Los Angeles

3 Plaintiff purports to bring a claim against the County for the conduct of
4 LAPD Officers Thompson and Suh, as well as LAPD Chief Beck. Complaint ¶
5 8. As an initial matter, it would appear that, at least with respect to LAPD
6 representatives Thompson, Suh and Chief Beck, the proper entity would be the
7 City of Los Angeles, not the County.

8 Regardless of whether Plaintiff intends to sue the City or the County, a
9 local government entity may only be sued under § 1983 for constitutional torts
10 committed by its agents or employees according to an official policy, practice,
11 or custom. See Monell, 436 U.S. at 690-91. Municipalities are "persons"
12 subject to liability under Section 1983 where official policy or custom causes a
13 constitutional tort. Id. at 690. However, a municipality "may not be sued
14 under § 1983 for an injury inflicted solely by its employees or agents. Instead, it
15 is only when execution of a government's policy or custom, whether made by
16 its lawmakers or by those whose edicts or acts may fairly be said to represent
17 official policy, inflicts the injury that the government as an entity is responsible
18 under § 1983." Id. at 694 (1978). Thus, a municipality may not be held liable
19 for the alleged actions of its employees or agents unless "the action that is
20 alleged to be unconstitutional implements or executes a policy statement,
21 ordinance, regulation, or decision officially adopted or promulgated by that
22 body's officers," or if the alleged constitutional deprivation was "visited
23 pursuant to a governmental 'custom' even though such a custom has not
24 received formal approval through the body's official decisionmaking
25 channels." Id. at 690-91.

26 Here, Plaintiff has failed to identify any regulations or policy statements
27 of either the City or County of Los Angeles, or officially adopted or
28 promulgated decisions from either entity, the execution of which by its agents

1 or employees allegedly inflicted the injuries about which he is complaining.
2 Plaintiff has therefore failed to allege sufficient facts for the Court to “draw the
3 reasonable inference” that the City or the County has a governmental custom
4 of engaging in the kind of unconstitutional conduct that Plaintiff is alleging
5 occurred here. See, e.g., Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996)
6 (“Liability for improper custom may not be predicated on isolated or sporadic
7 incidents; it must be founded upon practices of sufficient duration, frequency
8 and consistency that the conduct has become a traditional method of carrying
9 out policy.”); Thompson v. Los Angeles, 885 F.2d 1439, 1443-44 (9th Cir.
10 1989) (“Consistent with the commonly understood meaning of custom, proof
11 of random acts or isolated events are insufficient to establish custom.”),
12 overruled on other grounds, Bull v. City & Cty. of S.F., 595 F.3d 964, 981 (9th
13 Cir. 2010) (en banc). Accordingly, the Complaint fails to state a claim against
14 the County or the City of Los Angeles.

15 3. Official Capacity Actions against Individual Defendants

16 For Section 1983 actions, an “official-capacity suit is, in all respects
17 other than name, to be treated as a suit against the entity.” Kentucky v.
18 Graham, 473 U.S. 159, 166 (1985). Such a suit “is not a suit against the official
19 personally, for the real party in interest is the entity.” Id.

20 The Complaint purports to name t LAPD Chief Beck and LAPD
21 Officers Suh and Thompson in their official capacities. See, e.g., Complaint ¶¶
22 5-7. The claims against those defendants sued in their official capacities are
23 properly treated as claims against the entity that employs them, the City of Los
24 Angeles, which Plaintiff erroneously identifies as the County of Los Angeles.
25 However, regardless of whether the City or the County of Los Angeles is the
26 proper defendant, as discussed above, Plaintiff has alleged no unconstitutional
27 policy by any entity. Thus, the claims for damages against all the individual
28 defendants sued in their official capacities fail as a matter of law.

1 4. Claims against District Attorney Lacey, Alternate Public Defender
2 Fukai, and Chief Beck

3 Plaintiff's claims against District Attorney Lacey, Alternate Public
4 Defender Fukai, and Chief Beck appear to be based solely on their roles as
5 supervisors. See Complaint ¶¶ 21, 34, 35, 36, 47. Supervisory personnel are
6 generally not liable under §1983 for the actions of their employees under a
7 theory of respondeat superior because "[a] supervisor is only liable for
8 constitutional violations of his subordinates if the supervisor participated in or
9 directed the violations, or knew of the violations and failed to act to prevent
10 them." Taylor, 880 F.2d at 1045. Plaintiff does not describe any specific action
11 taken by these defendants but instead offers vague and conclusory allegations
12 of the involvement of these defendants in any alleged constitutional violations,
13 such as Chief Beck's alleged knowledge of Officers' Suh and Thompson's
14 "vicious propensities," or District Attorney Lacey's alleged approved of the
15 prosecution of Plaintiff. See Complaint ¶¶ 21, 34. But vague and conclusory
16 allegations concerning the involvement of official personnel in civil rights
17 violations are not sufficient. See Ivey, 673 F.2d at 268 (citations omitted).
18 Thus, the claims against these defendants in their supervisory capacity fail.

19 5. Claims against Prosecuting Attorneys.

20 Plaintiff brings claims against several members of the Los Angeles
21 District Attorney's office, including defendants Ipson, Weldon, and Kelly.² A
22 prosecuting attorney acting within the scope of his or her duties in initiating
23 and pursuing an action and in presenting the state's case is entitled to absolute
24 immunity. See Imbler v. Pachtman, 424 U.S. 409, 427 (1976). This immunity

25 ² In this section of the Complaint, Plaintiff also purports to name Bob Chen/Chan,
26 Kevin Liu, and David Richman, but fails to allege what role they played in allegedly
27 violating Plaintiff's constitutional rights. See Complaint ¶¶ 28, 35, 36. As the
28 Complaint does not that these individuals were state actors or violated Plaintiff's
rights, the claims against these individual defendants fail.

1 extends to all “acts undertaken by a prosecutor in preparing for the initiation of
2 judicial proceedings or for trial, and which occur in the course of his role as an
3 advocate for the State. Buckley v. Fitzsimmons, 509 U.S. 259, 273 (1993). A
4 prosecutor is not deprived of immunity because the action he or she took was
5 in error, done maliciously, or in excess of his or her authority. See Imbler, 424
6 U.S. at 434 n.34 (noting that prosecutor’s “deliberate withholding of
7 exculpatory information” and role in allegedly suborning perjury were shielded
8 by absolute immunity).

9 Plaintiff’s allegations against defendants Ipson, Weldon, and Kelly relate
10 primarily to Plaintiff’s claim that defendants were aware of Plaintiff’s
11 innocence at the time of his arraignment but continued to prosecute him
12 “without probable cause.” Complaint ¶¶ 36, 37. Plaintiff also alleges that DDA
13 Kelly “forged the felony complaint.” Id. ¶ 35. On examination, the signature
14 from DDA Kelly clearly indicates her signature was “for,” or in place of,
15 defendant Ipson. See Dkt. 1-1 at 4. Regardless, the allegations made here relate
16 to actions undertaken during the judicial phase of the criminal process and
17 they are entitled to prosecutorial immunity.

18 6. Claims against Public Defenders.

19 Plaintiff’s claims against DPDs DOE and Wakuta under § 1983 fail, as a
20 public defender representing a client in the lawyer’s traditional adversarial role
21 is not a state actor. Miranda v. Clark Cty. 319 F.3d 465, 466 (9th Cir. 2003)
22 (citing Polk Cty. v. Dodson, 454 U.S. 312, 325 (1981)) (“[A] public defender
23 does not act under color of state law when performing a lawyer’s traditional
24 functions as counsel to a defendant in a criminal proceeding.”)).

25 Plaintiff’s allegations against DPD Wakuta could be construed as an
26 attempt to allege in a conspiracy with members of the District Attorney’s
27 Office to deprive Plaintiff of his civil rights. See Complaint ¶¶ 54, 56. “A
28 private individual may be held liable under § 1983 if she conspired or entered

1 joint action with a state actor.’” Crowe v. Cty. of San Diego, 608 F.3d 406,
2 440 (9th Cir. 2010) (citation omitted). To allege conspiracy in a Section 1983
3 case, a plaintiff must allege “‘an agreement or meeting of the minds’ to violate
4 constitutional rights.” Id. (citation omitted). However, conclusory allegations
5 of conspiracy unsupported by facts are insufficient to allege a conspiracy
6 between a private party and a state actor. Simmons v. Sacramento Cty.
7 Superior Court, 318 F.3d 1156, 1161 (9th Cir. 2003). Plaintiff’s Complaint
8 alleges that DPD Wakuta conspired with DDA Weldon to amend Plaintiff’s
9 charges without notice – but the Complaint does not allege that DPD Wakuta
10 could have prevented such an amendment. See Complaint ¶ 54. Plaintiff
11 further alleges that DPD Wakuta and DDA Kelly corresponded by email
12 about the alteration of medical records to force Plaintiff to take a deal, without
13 describing how such an alteration could cause Plaintiff to accept a deal. See id.
14 ¶ 56. Plaintiff also does not allege facts to establish an agreement or meeting of
15 the minds to violate his constitutional rights as required by Crowe. 608 F.3d at
16 440. Therefore, Plaintiff’s claims against the public defenders fail.

17 7. Claims against Private Citizens.

18 Plaintiff also brings claims against defendants DiMateo, a private
19 investigator, defendant McCracken, an employee of Camacho auto sales, and
20 defendant Lennon, a panel Attorney. Complaint ¶ 58, 59, 60, 64, 65, 66, 67,
21 68. The thrust of Plaintiff’s allegations is that these individual defendants
22 conspired with other defendants to hinder Plaintiff’s ability to prove his
23 innocence. See id. The term “persons” under § 1983 encompasses state and
24 local officials sued in their individual capacity, private individuals and entities
25 which acted under color of state law, and local governmental entities. Vance v.
26 Cty. of Santa Clara, 928 F. Supp. 993, 995-96 (N.D. Cal. 1996) (citation
27 omitted). A defendant has acted under color of state law where he or she has
28 “exercised power ‘possessed by virtue of state law and made possible only

1 because the wrongdoer is clothed with the authority of state law.’” West, 487
2 U.S. at 49 (quoting United States v. Classic, 313 U.S. 299, 326 (1941)). Non-
3 state actors, however, may be held liable under Section 1983 when they have
4 conspired or acted in concert with state actors to deprive a person of his civil
5 rights. See Adickes v. S.H. Kress & Co., 398 U.S. 144, 152 (1970). However, a
6 plaintiff bringing claims under Section 1983 alleging a conspiracy between
7 state and non-state actors must sufficiently allege the non-state actors’
8 participation in a conspiracy to deprive the plaintiff of her civil rights. See id.

9 Plaintiff’s claims stated against private citizens are insufficiently pled as
10 they present only conclusory allegations of a conspiracy with no specific,
11 material facts from which a conspiracy could be inferred. See Margolis v.
12 Ryan, 140 F.3d 850, 853 (affirming a district court’s decision to dismiss a
13 Section 1983 complaint alleging conspiracy owing to its reliance on conclusory
14 allegations and an absence of specific facts to support the existence of a
15 conspiracy). Therefore, Plaintiff’s claims against defendants DiMateo,
16 McCracken, and Lennon fail for a lack of specific, material fact to support a
17 conspiracy claim under Section 1983.

18 8. Claims against Judicial Officers.

19 Claims brought against Judges Gordon and Sortino also fail, as judicial
20 officers are absolutely immune from liability for acts performed in their judicial
21 capacity. Mireles v. Waco, 502 U.S. 9, 11 (1991) (*per curiam*); Miller v. Davis,
22 521 F.3d 1142, 1145 (9th Cir. 2008) (“It has long been established that judges
23 are absolutely immune from liability for acts done by them in the exercise of
24 their judicial functions.” (internal quotations and citation omitted)). “This
25 immunity reflects the long-standing ‘general principle of the highest
26 importance to the proper administration of justice that a judicial officer, in
27 exercising the authority vested in him, shall be free to act upon his own
28 convictions, without apprehension of personal consequences to himself.’”

1 Olsen v. Idaho State Bd. of Med., 363 F.3d 916, 922 (9th Cir. 2004) (quoting
2 Bradley v. Fisher, 13 Wall. 335, 347 (1871)). This judicial immunity insulates
3 judges from suits brought under section 1983. Id. at 923.

4 Judicial immunity bars suit even if a judge is accused of acting in bad
5 faith, maliciously, corruptly, erroneously, or in excess of jurisdiction. Mireles,
6 502 U.S. at 11-13. Judicial immunity may be overcome only when the judge's
7 actions are not taken in his or her judicial capacity or when the actions, though
8 judicial in nature, are taken in the "complete absence of all jurisdiction." Id. at
9 11-12. The allegations against Judges Sortino and Gordon relate to conduct
10 they allegedly undertook as judicial officers during proceedings over Plaintiff's
11 criminal charges. See Complaint ¶¶ 69-85. Thus, the claims arise out of the
12 exercise of the Judges' judicial functions. As the allegations do not involve
13 actions taken in the "complete absence of all jurisdiction," judicial immunity
14 applies and claims against Judges Sortino and Gordon necessarily fail.

15 V.

16 CONCLUSION AND ORDER

17 Based upon the foregoing, the claims alleged in the Complaint are
18 subject to dismissal. Although it does not appear that the various substantive
19 pleading deficiencies can be cured by further amendment, because the
20 Complaint is so disjointed, such dismissal will be with leave to amend.

21 Accordingly, if Plaintiff still desires to pursue his claims, he shall file a
22 First Amended Complaint **within thirty (30) days of the date of this Order**
23 remedying the deficiencies discussed above.

24 Plaintiff's First Amended Complaint should bear the docket number
25 assigned in this case; be labeled "First Amended Complaint"; and be complete
26 in and of itself without reference to the prior complaint or any other pleading
27 or document. The First Amended Complaint must list the names of each
28 defendant in the caption, on the first page. See Fed. R. Civ. Proc. 10(a); Local

1 Rule 11-3.8(d). The First Amended Complaint will supersede the original
2 complaint. The First Amended Complaint may not alter the nature of this suit
3 by alleging new, unrelated claims. The First Amended Complaint must
4 identify which defendants are named in which counts, in what capacity, and
5 specify the factual allegations that Plaintiff contends supports liability for each
6 individual defendant. The Clerk is directed to send Plaintiff a blank Central
7 District civil rights complaint form, which Plaintiff is encouraged to use.

8 Plaintiff is strongly advised to review this Order carefully regarding the
9 various deficiencies outlined herein. If, after review, Plaintiff should decide not
10 to further pursue this action, Plaintiff may file a Notice of Dismissal Pursuant
11 to Federal Rule of Civil Procedure 41(a). The Clerk is directed to provide
12 Plaintiff with a copy of a blank for Notice of Dismissal.

13 Plaintiff is advised that a voluntary dismissal does not constitute a
14 “strike” under 28 U.S.C. § 1915(g), whereas a dismissal of a civil complaint
15 filed by a prisoner on the grounds that it “fails to state a claim upon which
16 relief may be granted” would constitute a “strike.” See 28 U.S.C. § 1915(g).

17 **Plaintiff is admonished that, if he fails to timely file a First Amended**
18 **Complaint within 30 days of the date of this Order, the Court will**
19 **recommend that this action be dismissed for failure to diligently prosecute.**
20

21 Dated: December 5, 2017

22 
23 JOHN D. EARLY
24 United States Magistrate Judge
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27
28